IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE SECOND DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

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WRIT PETITION NO : 13097 of 2003

Between:

The Branch Manager, United India Insurance Company Ltd.,
Ongole.

..... PETITIONER

AND

1. Shaikh Ghousiya, W/o. Late Khasim,
2. Shaikh Rasool, S/o. Khasim, minor rep. by mother-cum-natural guardian- Respondent No.1,
3. Shaikh Khasim Saheb, S/o. Badesaheb,
4. Shaikh Khasimba, W/o. Khasim Saheb,

Respondents 1-4 are Muslim residing at 1st Ward,

Ramakrishna Colony, Markapur,
Markapur Mandal, Prakasam District.

5. S.Viswanatha Sarma, S/o. Venkateswarlu Owner of Ambassador Car No. AIW 4343, M/s. Prashanthi English

Medium High School, Markapur Town, Markapur Mandal,

Prakasam District.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue a writ or order or direction in the nature of prohibition or otherwise declaring the order of the lower Court in W.C. No. 28/02 on the file of W.C. Commissioner,

Ongole in refusing to summon the Respondent No.5 herein to give evidence before the Court, as illegal, void and opposed to law and direct that the Respondent No.5 be present before the W.C. Commissioner, Ongole for giving evidence.

Counsel for the Petitioner: MR.K.L.N.RAO

Counsel for the Respondents: MR.SRICHARAN TELAPROLU

The Court made the following :

ORDER:

Heard both the Counsel.

2. The petitioner, which is an Insurance Company filed this writ petition *inter alia* seeking for a Mandamus to declare the order dated 09.06.2003 of the Assistant Commissioner for Workmen Compensation, Ongole rejecting the application to summon the fifth respondent herein for the purpose of giving evidence before the Court as illegal, void and opposed to Law.

3. The facts in brief are that, in a claim petition filed at the instance of the respondents 1 to 4 herein, an enquiry is going on. After contest, the owner of the vehicle has remained *ex parte*. Subsequent to the completion of the evidence on behalf of the claimants, the petitioner has filed the present application for the purpose of examining the owner, so as to prove the employment of the deceased with him and the petitioner has already raised a specific plea in this regard in the counter, while contesting the claim of the respondents 1 to 4 herein. Therefore, it is necessary to prove and consequentially examine the fifth respondent herein. However, the Assistant Commissioner for Workmen Compensation, Ongole has rejected the said application without giving any reasons.

4. Having considered the submission made and also on perusal of the material available on record, the application as has been filed and sought for is purely in the process of a regular trial, where a party seeks to establish his specific plea as found

from the pleading by producing the witness. It is now well established that the rules to be interpreted very liberally so as to provide not only due but also sufficient opportunity to the parties, so as to substantiate their respective claim by producing proper evidence. Any technicalities thereof at the stage of enquiry not only complicating the issue in the enquiry but also later add orders of remand and complaining as to non-providing the sufficient opportunities. Therefore, in view of the same, it is advisable to permit the petitioner to examine the fifth respondent herein and subject to cross-examination by the contesting respondents.

5. The writ petition is accordingly allowed. The application filed by the petitioner herein before the Assistant Commissioner for Workmen Compensation, Ongole to summon the fifth respondent herein is allowed. The Assistant Commissioner for Workmen Compensation, Ongole is directed to complete the enquiry within a period of two months from the date of receipt of a copy of this Order.

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B.PRAKASH RAO, J

Dated: 2nd February, 2005.

NOTE:

Issue C.C. in one week.

B/O

cs

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Wednesday, the 2nd day of February, Two Thousand and Five.

ASSISTANT REGISTRAR

To

1.The Assistant Commissioner for Workmen Compensation,

Ongole.

2.Two C.D. copies.